

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

LATOYA A., *on behalf of N.C.*,

Plaintiff,

v.

5:19-CV-581
(DJS)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

OLINSKY LAW GROUP
Attorney for Plaintiff
One Park Place
300 South State Street, Suite 420
Syracuse, New York 13202

HOWARD OLINSKY, ESQ.

U.S. SOCIAL SECURITY ADMIN.
OFFICE OF REG'L GEN. COUNSEL
REGION II
Attorney for Defendant
J.F.K. Federal Building - Room 625
Boston, Massachusetts 02203

NICOLE SONIA, ESQ.

DANIEL J. STEWART
United States Magistrate Judge

ORDER

Plaintiff brought this action pursuant to 42 U.S.C. § 405(g) seeking review of a decision by the Commissioner of Social Security that Plaintiff's minor child was not disabled. Dkt. No. 1. Currently before the Court are Plaintiff's Motion for Judgment on the Pleadings and Defendant's Motion for Judgment on the Pleadings. Dkt. Nos. 24 & 29. In support of Plaintiff's Motion, she raises two issues for review. One of the issues raised

is that the claim was adjudicated by an unconstitutionally appointed Administrative Law Judge. Dkt. No. 24, Pl.'s Mem. of Law, pp. 14-17. Defendant asserts that Plaintiff has forfeited any claim regarding the propriety of the ALJ's appointment because the issue was not raised in any administrative proceeding prior to the commencement of this action. Dkt. No. 29, Def.'s Mem. of Law, pp. 13-23.

With respect to the issue of whether a plaintiff who fails to raise the propriety of the ALJ's appointment prior to federal court forfeits the claim, there is currently a circuit split. *Montes v. Saul*, 2020 WL 6875301, at *4 (S.D.N.Y. Nov. 23, 2020) (discussing four conflicting circuit court decisions). The Supreme Court has granted *certiorari* to resolve the question. *Davis v. Saul*, No. 20-105, 2020 WL 6551772 (Nov. 9, 2020); *Carr v. Saul*, No. 19-1442, 2020 WL 6551771 (Nov. 9, 2020). The Court hereby stays this proceeding pending the Supreme Court's disposition of the appeals in *Davis* and *Carr*.

ACCORDINGLY, this action is **STAYED**.

Dated: December 30, 2020
Albany, New York



Daniel J. Stewart
U.S. Magistrate Judge